



June 6, 2002

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2002-3074

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163957.

The Texas Lottery Commission (the "commission") received a request for the following information: (1) the calendars and schedules of two employees of the commission from March 1, 2001 to the date of the request; (2) information relating to another individual that was exchanged between the commission and the Office of the Attorney General between March 1, 2001 and the date of the request; and (3) information relating to that same individual that was exchanged between the commission and the Office of the Governor between March 1, 2001 and the date of the request. You have submitted information that the commission deems to be responsive to this request. The commission believes that this information may be excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted. We assume that the commission has released any other information, to the extent that it exists, that is responsive to this request for information. If the commission has not done so, then it must release that information at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).* We note, however, that chapter 552 of the Government Code does not require the commission to release information that did not exist when it received this request or to create responsive information. *See Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The commission raises section 552.101 in conjunction with the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2)

of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

The commission takes no position as to whether the submitted information is protected by common-law privacy under section 552.101. Moreover, the commission notes that this information relates to an incident that has been the subject of articles in at least three metropolitan newspapers. The commission has provided copies of these articles, which contain much of the submitted information. The commission also notes, however, that an employee to whom this information pertains asserts that it is private and should not be disclosed to the public. Therefore, we will determine whether this information is private under section 552.101. See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). The common-law right to privacy does not protect information that is a matter of legitimate public interest, even if a person of ordinary sensibilities would object to the release of the information on grounds that it is highly intimate or embarrassing. See Open Records Decision No. 423 at 2 (1984). Thus, because the public has a legitimate interest in information that relates to public officials and employees, their common-law privacy rights are considerably narrower than those of private individuals. See Gov't Code § 552.102(a); *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 400 (1983), 405 (1983), 423 (1984), 438 (1986), 444 (1986), 470 (1987), 473 (1987). Therefore, having thoroughly reviewed the submitted information, we conclude that none of it is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the commission may be required to withhold some of the submitted information under section 552.117 of the Government Code. Section 552.117(1) excepts from public disclosure the home address, home telephone number, and social security number of a current or former official or employee of a governmental body, as well as information that reveals whether the person has family members, if the current or former official or employee requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 at 5-6 (1994), 455 at 2-3 (1987). This

information may not be withheld, however, if the current or former official or employee made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We have marked the information that the commission may be required to withhold under section 552.117.

In summary, some of the submitted information may be excepted from disclosure under section 552.117 of the Government Code. With that possible exception, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

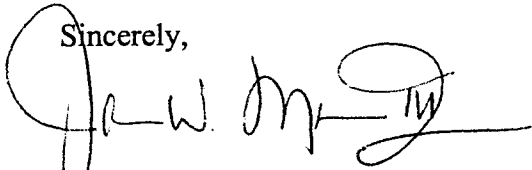
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a large, stylized initial 'J' and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 163957

Enc: Marked documents

c: Mr. Jay Root
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(w/o enclosures)